

# EXHIBIT 13

LENORE KNUDTSON  
LEWIS vs MI DEPT. OF EDUCATION

October 29, 2024  
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Page 1		Page 3	
1	U.S. DISTRICT COURT	1	A P P E A R A N C E S (Continued):
2	WESTERN DISTRICT OF MICHIGAN	2	
3	SOUTHERN DIVISION	3	Ticara D. Hendley, Esq.
4		4	Michigan Department of Attorney General
5	Donquarion Lewis; Ke'Aujanaa	5	Health, Education & Family Services Division
6	Shepherd-Friday; and K.B., by	6	P.O. Box 30758
7	and through her parent and	7	Lansing, Michigan 48909
8	Next friend, H.B.,	8	(517) 335-7603
9	Plaintiffs,	9	hendleyt1@michigan.gov
10		10	Appearing on behalf of the Defendant
11	vs. Case No. 1:22-cv-00838-RJJ-PJG	11	
12		12	
13	MICHIGAN DEPARTMENT OF EDUCATION,	13	ALSO PRESENT:
14	a governmental agency,	14	Meredith Isaac
15	Defendant.	15	
16		16	
17		17	
18		18	
19	Deposition of LENORE KNUDTSON	19	
20	Taken via Remote Videoconference	20	
21	Commencing at 10:00 a.m.	21	
22	Tuesday, October 29, 2024	22	
23	Before Paula S. Raskin, CSR	23	
24		24	
25		25	

Page 2		Page 4	
1	A P P E A R A N C E S (All Remote):	1	E X A M I N A T I O N S
2		2	
3	Mitchell D. Sickon, Esq.	3	
4	Erin H. Diaz, Esq.	4	WITNESS PAGE
5	DISABILITY RIGHTS MICHIGAN	5	LENORE KNUDTSON
6	4095 Legacy Parkway	6	EXAMINATION BY MR. SICKON: 6
7	Lansing, Michigan 48911	7	
8	(517) 487-1755	8	
9	msickon@drnich.org	9	E X H I B I T S
10	ediaz@drnich.org	10	
11	and	11	NUMBER DESCRIPTION PAGE
12	Jennifer B. Salvatore, Esq.	12	EXHIBIT 59 Email Re Draft Letter to KPS 132
13	Salvatore Prescott Porter & Porter	13	Counsel
14	105 East Main Street	14	EXHIBIT 63 Pingora Report - Feb 2016 24
15	Northville, Michigan 48167	15	EXHIBIT 67 OSEP General Supervision 57
16	(248) 679-8711	16	23-01
17	salvatore@spplaw.com	17	EXHIBIT 82 Pingora Report - Feb 2021 95
18	Appearing on behalf of the Plaintiffs	18	EXHIBIT 86 23-0051 Final Decision 195
19		19	EXHIBIT 99 Knudtson CV 24
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<p style="text-align: right;">Page 9</p> <p>1 question, okay?</p> <p>2 A. Okay.</p> <p>3 Q. If you need a break at any time, for any reason,</p> <p>4 please tell me or tell your attorney. I will finish</p> <p>5 my line of questioning if we are in the middle of it</p> <p>6 and then see to that break. Does that sound fair?</p> <p>7 A. Yes.</p> <p>8 Q. Now, because this is all an effort to get your full,</p> <p>9 complete, and accurate answers, I have to ask are</p> <p>10 you taking any medications or drugs of any kind that</p> <p>11 might make it difficult for you to understand and</p> <p>12 answer my questions today?</p> <p>13 A. None.</p> <p>14 Q. Have you taken any cough syrup or medicine or</p> <p>15 anything containing alcohol that likewise might make</p> <p>16 it hard to answer questions today?</p> <p>17 A. No.</p> <p>18 Q. Okay. Are you sick at all today?</p> <p>19 A. No.</p> <p>20 Q. Okay. Glad to hear it.</p> <p>21 Now, is there any reason other than</p> <p>22 anything I've talked about why you can't give full,</p> <p>23 complete, and accurate testimony today?</p> <p>24 A. I do not have any reasons.</p> <p>25 Q. Okay. So we're going to start today talking about</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Are there any other employees at Pingora</p> <p>3 Consulting other than you and Ms. Weaver?</p> <p>4 A. No.</p> <p>5 Q. Since you started consulting in 2005, have you done</p> <p>6 any other work in special education?</p> <p>7 A. I'm not sure what you mean by any other work.</p> <p>8 Q. As an attorney, have you represented any parties in</p> <p>9 special education matters?</p> <p>10 A. No. If I could clarify my previous response,</p> <p>11 though, when you asked if I have represented</p> <p>12 families, any families, since I believe 2005, I</p> <p>13 have, in addition to my special education practice,</p> <p>14 at times maintained a small private practice here in</p> <p>15 my home community just to keep the courtroom skills</p> <p>16 sharp, and I have on occasion represented, for</p> <p>17 instance, people with mental health needs, children</p> <p>18 removed from their home by the child protection</p> <p>19 system, but not in education in any capacity.</p> <p>20 Q. Okay. And that sounds more like abuse and neglect</p> <p>21 work? Is that fair?</p> <p>22 A. There was some abuse and neglect work, and there was</p> <p>23 also some mental health work.</p> <p>24 Q. So like commitments and things like that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 your background, and I'm going to pull up your CV.</p> <p>2 Let me make sure it's as big as possible</p> <p>3 so that we keep that readable. How does that look?</p> <p>4 A. I can see it.</p> <p>5 Q. Okay. It says here that your first educational</p> <p>6 employment experience was working as a school</p> <p>7 psychologist. Is that right?</p> <p>8 A. Yes.</p> <p>9 Q. And in addition, you were representing students as</p> <p>10 an attorney from 1997 to 2004?</p> <p>11 A. Yes.</p> <p>12 Q. Have you worked representing families since that</p> <p>13 time?</p> <p>14 A. No.</p> <p>15 Q. After that, it looks like you started educational</p> <p>16 consultation work in 2005. Is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And that was on your own through Utah State?</p> <p>19 A. I'm not sure what you mean by on my own through Utah</p> <p>20 State.</p> <p>21 Q. Before you formed Pingora with Stephanie Weaver.</p> <p>22 A. Oh, okay. Yes, I have had a consulting relationship</p> <p>23 with Utah State University since 2005.</p> <p>24 Q. Okay. But then you formed Pingora Consulting with</p> <p>25 Stephanie Weaver in 2012, right?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay, thank you. I appreciate you adding to -- and</p> <p>2 if you need to do that in any other future questions</p> <p>3 or answers, something comes to you later, feel free</p> <p>4 to supplement in the same way, okay?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I'll move on to Page 2 here where we see your</p> <p>7 professional highlights, okay?</p> <p>8 A. Yes.</p> <p>9 Q. Now, looking through this pretty quickly, it seems</p> <p>10 like most of these are related to your work</p> <p>11 performed as an educational consultant. Is that</p> <p>12 fair?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, at the very top, we see that you are</p> <p>15 also a senior consultant at CADRE, the Center for</p> <p>16 Appropriate Dispute Resolution in Special Education,</p> <p>17 right?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. Was that or is that a paid position?</p> <p>20 A. No.</p> <p>21 Q. Okay. So that's a volunteer position?</p> <p>22 A. It's an invited position.</p> <p>23 Q. And so it's kind of pro bono?</p> <p>24 A. Yes. CADRE invites what they consider to be</p> <p>25 experts --</p>

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1 (Reporter clarification.)

2 A. CADRE invites professionals from the field to become

3 senior dispute resolution consultants for them.

4 Q. And how long have you done that?

5 A. I would say two to three years.

6 Q. Now I'm going to go through the rest of these

7 professional highlights and I'm going to talk

8 specifically about some of the connections with MDE.

9 First, you list national and state

10 trainer after the presenter, and so in that trainer

11 section, it notes that you have trained MDE in ALJ

12 systems and complaint investigators. Is that right?

13 A. Yes.

14 Q. Okay. And you've presented repeatedly on complaint

15 investigation to MDE, right?

16 A. I'm not sure what you mean by repeatedly, but I've

17 had regular training with them.

18 Q. Do you know how many times you've presented a

19 training that was intensive, maybe say involving a

20 presentation through PowerPoint on that topic to

21 MDE?

22 A. And by topic, you mean complaint investigations

23 specifically?

24 Q. Yeah.

25 A. I would say -- this would be strictly an estimate.

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1 I would say 15 to 20 times.

2 Q. Any idea how many times that's been to MDE?

3 A. That would be to MDE.

4 Q. Okay. Now, the ALJ systems that's mentioned here,

5 is that a training for ALJs or training for SEAs

6 about ALJs?

7 A. It is typically to ALJs.

8 Q. So ALJs are the intended audience then.

9 A. Yes.

10 Q. Are there any other special education trainings that

11 you've provided to MDE staff on topics other than

12 those two areas?

13 A. When you train on complaints investigation, or at

14 least when I train on complaints investigation, it

15 also involves substantive topic areas.

16 Q. Okay. We'll go through some of -- a couple of those

17 presentations later.

18 Can you tell me what is the rate that you

19 charge for training?

20 A. It has varied over the years, but training is

21 roughly \$200 an hour.

22 Q. Now, in the next section of the professional

23 highlights is -- that relates to Michigan at least,

24 is the IDEA dispute resolution consultant, slash,

25 investigator, slash, mediator. And MDE is listed as

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1 one of the folks that you've worked for in that

2 capacity, right?

3 A. Yes.

4 Q. All right. Now, let's take consultant first.

5 What's involved in that role for you when you work

6 with MDE?

7 A. Ongoing professional development and technical

8 assistance.

9 Q. Okay. When you say ongoing, how frequently?

10 A. In Michigan specifically, typically every other week

11 barring a holiday that falls on that day or some

12 other conflict, like staff may be attending some

13 kind of in-house workshop or out-of-state -- or

14 out-of-office training.

15 Q. Okay. So the -- twice a month, you said,

16 thereabouts?

17 A. Thereabouts.

18 Q. And how long has that kind of ongoing technical

19 assistance relationship been with MDE?

20 A. I would say roughly since 2017, '18.

21 Q. Okay. And would the rate that you charge for that

22 be similar to what you charge for trainings?

23 A. Yes.

24 Q. So about 200 an hour?

25 A. Yes.

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1 Q. Okay. Now let's talk about the investigator

2 component of that role. It says IDEA dispute

3 resolution investigator role. What do you do in

4 that capacity for MDE?

5 A. On occasion I serve as the complaint investigator,

6 so mostly in the capacity of a complaint filed

7 against MDE directly, although they have the

8 authority under the federal regulations to conduct

9 their own investigation by internal staff when there

10 is a complaint filed against MDE.

11 MDE has, in many instances, opted to

12 assign that out to an investigator, and I've been

13 one of the investigators that have been assigned

14 state complaint investigations when a complaint's

15 filed against MDE.

16 And there have been maybe two or three

17 other times where they have requested that I conduct

18 a complaint investigation that may not be against

19 MDE. It may be against a district or an ISD.

20 Q. Okay. And about how long has -- have you been doing

21 that work, investigating state complaints, whether

22 against MDE or other entities?

23 A. I would say roughly the same time period, 2017, '18.

24 Q. And in terms of rate of pay, again is that similar,

25 about \$200 an hour, to do the investigation work?

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<p style="text-align: right;">Page 17</p> <p>1 A. Yes.</p> <p>2 Q. The last is mediator. Do you work as a mediator for</p> <p>3 MDE?</p> <p>4 A. No.</p> <p>5 Q. So in this block, it's primarily the consultant and</p> <p>6 investigator work that you do for MDE.</p> <p>7 A. Yes.</p> <p>8 Q. All right. The next section is independent court</p> <p>9 expert. It says that you also work with MDE in that</p> <p>10 capacity as well, right?</p> <p>11 A. Yes.</p> <p>12 Q. And we talked a little bit before about being</p> <p>13 deposed and that you were involved in the AB case,</p> <p>14 which was against MDE, right?</p> <p>15 A. Yes.</p> <p>16 Q. Other than the AB case, is there any other work that</p> <p>17 you've done in this capacity as an independent court</p> <p>18 expert for MDE?</p> <p>19 A. This case.</p> <p>20 Q. Okay. That makes sense.</p> <p>21 All right. Now, going back just briefly</p> <p>22 to that dispute resolution consultant work you did</p> <p>23 for MDE, as a part of Pingora, you issued reports to</p> <p>24 MDE about its dispute resolution system in 2016 and</p> <p>25 2021, right?</p>	<p style="text-align: right;">Page 19</p> <p>1 A. Yes.</p> <p>2 Q. And that's -- OPI is the SEA Montana?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you know if that case settled before it</p> <p>5 went to Federal Court?</p> <p>6 A. I do not. Again, my involvement was in anticipation</p> <p>7 of litigation, and I was never formally deposed and</p> <p>8 I wasn't made aware of the status of any Federal</p> <p>9 Court case.</p> <p>10 Q. Okay. Now, the last section that references MDE is</p> <p>11 the ongoing IDEA technical assistance. Now, we</p> <p>12 already talked a little bit about this, the kind of</p> <p>13 twice a month schedule. Is that what this section</p> <p>14 refers to when it comes to MDE's relationship with</p> <p>15 you and your work?</p> <p>16 A. Yes.</p> <p>17 Q. Now, we've talked about a whole slew of different</p> <p>18 ways that you've worked with MDE in reviewing your</p> <p>19 CV, right?</p> <p>20 A. I'm not sure what you mean by slew, but there were</p> <p>21 several or multiple ways, yes.</p> <p>22 Q. Sure. Are there any other ways that you've worked</p> <p>23 for MDE that we have not talked about?</p> <p>24 A. Not to my knowledge, no. I mean there's --</p> <p>25 consultation or being a consultant is a broad</p>
<p style="text-align: right;">Page 18</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And when you performed that work, were you</p> <p>3 paid the -- about \$200 an hour type rate or was that</p> <p>4 different?</p> <p>5 A. I suspect almost ten years ago, it was a little bit</p> <p>6 less.</p> <p>7 Q. And the 2021, it might have been a little bit more?</p> <p>8 A. I don't recall.</p> <p>9 Q. Were there any other instances when your consulting</p> <p>10 with MDE produced a substantive report like the ones</p> <p>11 Pingora issued in 2016 or 2021?</p> <p>12 A. No.</p> <p>13 Q. Okay. Now, when we were last talking about</p> <p>14 independent court expert as we were going through</p> <p>15 this list, you had mentioned the New Mexico case, so</p> <p>16 I would assume that's what the New Mexico</p> <p>17 Department -- or Education Department reference here</p> <p>18 is.</p> <p>19 What was your involvement with the</p> <p>20 Montana Office of Public Instruction?</p> <p>21 A. It was in anticipation of litigation. I was not</p> <p>22 deposed in that matter.</p> <p>23 Q. What was the case?</p> <p>24 A. I do not recall the name.</p> <p>25 Q. The SEA was involved in that Montana case?</p>	<p style="text-align: right;">Page 20</p> <p>1 category.</p> <p>2 Q. And so they might call you outside of the every, you</p> <p>3 know, two-week meeting that's scheduled for your</p> <p>4 opinion on something, just as an example?</p> <p>5 A. Yes. I think that --</p> <p>6 Q. Or send an -- just send an email about a question</p> <p>7 they have, something like that?</p> <p>8 A. I think that's possible.</p> <p>9 Q. Okay, all right. So you mentioned that consulting</p> <p>10 is a broad term, and, you know, I've just mentioned</p> <p>11 like kind of an informal kind of discussion, and</p> <p>12 we've talked about the regularly scheduled meetings.</p> <p>13 Was there anything, you know, that you do</p> <p>14 in terms of consulting outside of those things with</p> <p>15 MDE?</p> <p>16 A. No. I would be available to them if they had</p> <p>17 questions, and I am regularly scheduled to provide</p> <p>18 technical assistance and consultation to them.</p> <p>19 Q. So do you have a contract with them that -- like as</p> <p>20 an independent contractor to work with them on</p> <p>21 special education matters?</p> <p>22 A. Pingora Consulting does.</p> <p>23 Q. How long has that relationship existed between</p> <p>24 Pingora and MDE?</p> <p>25 A. Roughly since -- you mean the ongoing relationship?</p>

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1 Q. Your expert report in this case.  
2 A. I'm sorry, I'm not tracking.  
3 Q. In this case, the expert report that you filed was  
4 issued under your own name and not through Pingora  
5 Consulting. Is that correct?  
6 A. If you scroll up, it was issued under Pingora  
7 Con- -- oh, I'm sorry, you switched. Okay. I  
8 thought you were still on the other report. I'm  
9 sorry.  
10 Q. No.  
11 A. This is, yes, it is issued under my name. It is  
12 still work through Pingora Consulting. My business  
13 partner is not an attorney, and this would have been  
14 work that would be assigned to me as the attorney in  
15 the partnership.  
16 Q. I see, thank you. We are going to get to this 2016  
17 report. I just wanted to clarify some of the  
18 relationship and the work from Pingora Consulting  
19 and things like that first.  
20 A. Sorry for the confusion, but this report was on the  
21 screen when you first asked the question, which --  
22 Q. Yeah, that makes sense.  
23 And we talked earlier about the work that  
24 Pingora was produced through -- or for MDE, right?  
25 There was a lot of work starting, it sounds like,

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1 2017, 2018 there's been an ongoing relationship. Is  
2 that right?  
3 A. Yes.  
4 Q. Okay. And your personal contributions were a  
5 substantial part of all that work, right?  
6 A. Yes. Likewise would be my partners.  
7 Q. Yes, absolutely. Would you say that you and  
8 Ms. Weaver contribute roughly equal amounts to any  
9 work produced by Pingora Consulting?  
10 A. Roughly. She works in areas in which I don't work,  
11 and I work in areas in which she doesn't work.  
12 Q. Okay. And you mentioned the kind of legal split;  
13 that you handle more legal matters. Is that right?  
14 A. Yes.  
15 Q. Okay. Would you agree that through Pingora, you  
16 express your expertise in legal matters?  
17 A. Yes.  
18 Q. Okay. And would you agree that through Pingora, in  
19 say presentations or trainings, the depositions and  
20 recommendations expressed are also your positions  
21 and your recommendations?  
22 A. Yes, if I understand the question correctly.  
23 Q. Yeah, that essentially when Pingora presents  
24 materials, that's also a representation of your  
25 position.

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1 A. Okay. It's a representation of our position, so  
2 meaning that my business partner, Stephanie, and I  
3 would have collaborated on that, and it represents  
4 our understanding of OSEP's interpretation and  
5 guidance of the law.  
6 Q. Now, you had mentioned that you handle more of the  
7 legal aspect of Pingora Consulting's work. What  
8 would you say is one of Ms. Weaver's areas of  
9 expertise?  
10 A. Finance, school district finances.  
11 Q. Other than those two areas, do you feel like your  
12 expertise is fairly equivalent in other areas?  
13 A. I'm not sure I understand your question.  
14 Q. I just don't know if there's other topics where you  
15 would defer to her expertise or she would defer to  
16 yours.  
17 A. Well, I would definitely defer to her in finance  
18 questions, and -- and I can't answer when she would  
19 exclusively defer to me.  
20 Q. Okay, fair enough. Let's jump into the report. So  
21 on Page 2 here --  
22 (Reporter clarification.)  
23 Q. So this is Exhibit 63, like I had mentioned before,  
24 and here on Page 2, it notes that OSE commissioned  
25 this review in order to make improvements to its

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1 system of general supervision, right?  
2 A. Yes.  
3 Q. Did you or Ms. Weaver have any discussions with MDE  
4 personnel about why it wanted to improve its system  
5 of general supervision?  
6 A. I'm sure that we did, but I can't recall the  
7 substance of those.  
8 Q. Do you have any idea of who you might have talked  
9 to?  
10 A. Teri Rink and previous assistant directors and/or  
11 supervisors, and I don't recall their names. I can  
12 recall their first names, but not their last names.  
13 Q. Can you recall the general substance of those  
14 conversations?  
15 A. The -- so you're talking about preceding the  
16 commissioning of this report?  
17 Q. Yes.  
18 A. Yes. They were interested in taking a look at their  
19 general supervision system and getting feedback on  
20 how to make improvements to it.  
21 Q. Okay.  
22 A. By way of more context, I had been presenting at a  
23 national conference. Teri Rink was in the audience  
24 and spoke to me afterwards about who I was and if I  
25 did work at the state level as well. So that was



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<p style="text-align: right;">Page 29</p> <p>1 the first time the conversation started about the</p> <p>2 possibility of doing work in Michigan.</p> <p>3 Q. You mentioned there was a national conference. Do</p> <p>4 you remember what you were presenting on?</p> <p>5 A. No.</p> <p>6 Q. Okay, all right. We'll head to Page 3 here. Now,</p> <p>7 this is a page that's titled "System of General</p> <p>8 Supervision," right?</p> <p>9 A. Yes.</p> <p>10 Q. And here in the part that we can see right now, it</p> <p>11 shows a relationship between due process hearings,</p> <p>12 state complaints, determinations, and monitoring,</p> <p>13 right?</p> <p>14 A. Yes.</p> <p>15 Q. That relationship seems to be that due process,</p> <p>16 state complaints, and determinations all provide</p> <p>17 information for monitoring. Is that right?</p> <p>18 A. No.</p> <p>19 Q. What is it showing?</p> <p>20 A. It shows that the broken lines from due process</p> <p>21 hearings, state complaints, and monitoring all feed</p> <p>22 into and factor into the determinations that get</p> <p>23 made, and then all three of those systems -- due</p> <p>24 process hearings, state complaints, and</p> <p>25 determinations -- inform monitoring.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Now, would you say the same of resolution agreements</p> <p>2 which are sent to OSEP as a part of Indicator 15?</p> <p>3 A. No, I would not say the same.</p> <p>4 Q. What's the difference?</p> <p>5 A. A, it's not a confidential process, and, B, it's</p> <p>6 part of the due process hearing system.</p> <p>7 Q. Now, moving on to the second half of this page, and</p> <p>8 this looks like there's a funnel with three bubbles</p> <p>9 in it. Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. One is determinations, one is monitoring, the last</p> <p>12 one is dispute resolution, right?</p> <p>13 A. Yes.</p> <p>14 Q. The dispute resolution one has a couple bullet</p> <p>15 points. It's complaints and due process, right?</p> <p>16 A. Yes.</p> <p>17 Q. I assume the complaints is state complaints?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And that seems to be communicating that all</p> <p>20 those components of the state system of general</p> <p>21 supervision are being fed into this funnel at the</p> <p>22 top, right?</p> <p>23 A. Yes.</p> <p>24 Q. And then down at the bottom, there's -- at the</p> <p>25 bottom of the funnel, there's something called</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Okay. And in this way, is it something of a</p> <p>2 feedback loop?</p> <p>3 A. Some might say that, yes.</p> <p>4 Q. And what role do state complaints play in that kind</p> <p>5 of feedback loop?</p> <p>6 A. They inform monitoring. They inform determinations.</p> <p>7 Q. Now, in this upper half of this page, there's also</p> <p>8 mediation, which just seems to be hanging out by</p> <p>9 itself, not necessarily informing any of the other</p> <p>10 parts that we discussed. Is that right?</p> <p>11 A. Yes.</p> <p>12 Q. And there's SPPAPR Indicator 16, though, right?</p> <p>13 A. Well, that indicator exists. I'm not sure what the</p> <p>14 question is.</p> <p>15 Q. Mediation informs that indicator. Is that right?</p> <p>16 A. Yes.</p> <p>17 Q. So how many mediation agreements there are get</p> <p>18 reported to OSEP through that indicator.</p> <p>19 A. Yes, so it is a numeric data point on the mediation</p> <p>20 system as opposed to a substantive one.</p> <p>21 Q. Okay. Yeah, but seeing this kind of feedback loop,</p> <p>22 mediation doesn't really play a role. Would that be</p> <p>23 fair?</p> <p>24 A. It's because mediation is confidential, it does not</p> <p>25 play a role.</p>	<p style="text-align: right;">Page 32</p> <p>1 TA/PD, which I assume is technical assistance,</p> <p>2 slash, professional development. Is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And so these three components inform how an</p> <p>5 SEA ought to craft that TA and PD. Is that fair?</p> <p>6 Is that what this is communicating?</p> <p>7 A. These three components are not the only sources of</p> <p>8 information that would be used to craft the TA and</p> <p>9 PD, but certainly with respect to the focuses --</p> <p>10 focus of our report on general supervision, these</p> <p>11 are three strong factors that would inform the</p> <p>12 technical assistance and professional development</p> <p>13 needs of the state.</p> <p>14 Q. Are there other particularly important areas that</p> <p>15 also feed that system to inform SEAs about what TA</p> <p>16 to craft or what PD to provide?</p> <p>17 A. Certainly, new or novel requirements under the law,</p> <p>18 new or novel court interpretations of a longstanding</p> <p>19 premise in the law, requests of school districts or</p> <p>20 the ISDs could also inform that and should inform</p> <p>21 that.</p> <p>22 Q. All right. Now we're going to move to Page 4. Here</p> <p>23 there's a table of contents that show this report</p> <p>24 reviews several what it calls components of the</p> <p>25 general supervision system, right?</p>

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<p>1 end of Paragraph 2 here.</p> <p>2 This February 2016 report echoes the</p> <p>3 US DOE statement that the broad scope of the state</p> <p>4 complaint system is critical to the state's exercise</p> <p>5 of its general supervision responsibilities, right?</p> <p>6 A. Yes.</p> <p>7 Q. Would you agree that used with that connotation,</p> <p>8 when something is critical, it's usually considered</p> <p>9 necessary?</p> <p>10 A. I can't say that it could equate to necessary, no.</p> <p>11 MR. SICKON: And your report in this</p> <p>12 case, we're going to mark this as Exhibit 100.</p> <p>13 (DEPOSITION EXHIBIT 100 MARKED</p> <p>14 FOR IDENTIFICATION at 10:51 a.m.)</p> <p>15 BY MR. SICKON:</p> <p>16 Q. And this is the expert report that you provided for</p> <p>17 this case, right, Ms. Knudtson?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, we're going to go to Page 3, state</p> <p>20 complaint system requirements.</p> <p>21 Here you quote the dispute resolution</p> <p>22 procedures under Part B in an OSEP document from</p> <p>23 2013. Is that right?</p> <p>24 A. Yes.</p> <p>25 Q. It's Question B-1 and its answer, right?</p>	<p>1 A. Yes.</p> <p>2 Q. Now, we're going to jump back to your 2016 report.</p> <p>3 We're going to go through some of the chart on the</p> <p>4 state complaint system.</p> <p>5 On Page 6, Pingora found that OSE had</p> <p>6 some inconsistencies with federal requirements,</p> <p>7 right?</p> <p>8 A. Yes.</p> <p>9 Q. And those -- that federal requirement was</p> <p>10 300.151(a), right, because the findings correspond</p> <p>11 to the regulations subpart at issue, right?</p> <p>12 A. There's an interplay between sections here 300.151,</p> <p>13 Paragraph A, requires written procedures that the</p> <p>14 SEA must adopt, and within the adopted written</p> <p>15 procedures, there was an inconsistency with</p> <p>16 300.153(b)4(v).</p> <p>17 Q. Okay. And that's one of the inconsistencies listed</p> <p>18 in the findings here on Page 6, right?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And there's a total of six inconsistencies</p> <p>21 that carry over onto Page 7, right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Now, do you believe that the procedures,</p> <p>24 considering this list, would be compliant with the</p> <p>25 requirements of the state complaint system as</p>
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<p>1 A. Yes.</p> <p>2 Q. The question is: Why are states required to have</p> <p>3 complaint procedures when the IDEA statute does not</p> <p>4 contain those procedures, right?</p> <p>5 A. Yes.</p> <p>6 Q. And OSEP's answer, which you quote, includes the</p> <p>7 statement here towards the end: We believe that the</p> <p>8 state complaint process is fully supported by the</p> <p>9 Act and necessary for the proper implementation of</p> <p>10 the Act and these regulations.</p> <p>11 Is that right?</p> <p>12 A. Yes.</p> <p>13 Q. This is language that you've included in other</p> <p>14 training documents you've presented to MDE for state</p> <p>15 complaint investigators, right?</p> <p>16 A. Yes.</p> <p>17 Q. As the authority for the state complaint system? Is</p> <p>18 that right?</p> <p>19 A. At least in part, yes.</p> <p>20 Q. Okay. And do you agree with the idea that the state</p> <p>21 complaint system is fully supported by the IDEA?</p> <p>22 A. Absolutely.</p> <p>23 Q. And would you agree that a compliant state complaint</p> <p>24 system is necessary for a state's exercise of its</p> <p>25 general supervision responsibilities?</p>	<p>1 contemplated by IDEA?</p> <p>2 A. With respect to the requirements to have written</p> <p>3 procedures that are compliant with IDEA, not at that</p> <p>4 time. Not in 2016, no.</p> <p>5 Q. Okay. We're going to move to Page 8, but we'll be</p> <p>6 in the same regulation. We're still in 151 here.</p> <p>7 Okay. Now, scroll back up. We're in</p> <p>8 151(b), and in Pingora's feedback concerning</p> <p>9 Regulation 151(b), it states: The complaint system</p> <p>10 does not consistently address substantive issues,</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. On the same page, Pingora's review of information</p> <p>14 related to 151(b)(1), it found that OSE's corrective</p> <p>15 action appears to address procedural rather than</p> <p>16 substantive issues, right?</p> <p>17 A. Yes.</p> <p>18 Q. Now, with both of those in mind, are those practices</p> <p>19 compliant with the requirements for a state</p> <p>20 complaint system?</p> <p>21 A. In 2016, when they were discovered, it was not</p> <p>22 compliant.</p> <p>23 Q. Okay. Now, we're on the same page, and we're still</p> <p>24 looking at 151(b)(1) findings, states here that</p> <p>25 Pingora found that the student level corrective</p>



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1 action lacks specificity, right?

2 A. Yes.

3 Q. And that compensatory education determinations are

4 relinquished to the IEP team, right?

5 A. Yes.

6 Q. Both of those practices would concern an appropriate

7 remedy for the student at issue. Would you agree?

8 A. Yes.

9 Q. Would those practices be considered compliant with

10 the requirements of a state complaint system when

11 they were discovered in 2016?

12 A. The last one that you mentioned, compensatory

13 education determinations being relinquished to the

14 IEP team, would be, no, student-level corrective

15 action lacks specificity is not clear enough the way

16 it's written there in that context to be able to say

17 it is compliant or not.

18 Q. Finally, moving to 151(b)(2), Pingora found that

19 complaint decisions do not appear to address the

20 future provision of services for all children with

21 disabilities. Is that right?

22 A. Yes.

23 Q. Okay. And with that practice in mind, would that be

24 compliant with the requirements of a state complaint

25 system?

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1 A. In 2016, it was not compliant.

2 Q. Okay. I'm going to move on to Page 10, and so now

3 we're crossing over into 34 CFR 300.152.

4 Now, when it comes to 152(a)(5)(i),

5 Pingora found that violations -- I'm sorry, found

6 that decisions are difficult and confusing to read,

7 violations are not clear, and correction of

8 noncompliance is not specific to the student, right?

9 A. Yes.

10 Q. And to you, would that reinforce the earlier finding

11 that student level corrective action was unclear?

12 A. I'm not sure what you mean.

13 Q. In the earlier part of the chart, it mentioned that

14 student level corrective action was unclear. Do you

15 think that it's at all related to this finding that

16 decisions are difficult and confusing to read and

17 violations are not clear?

18 A. So first of all, are you referring to the section

19 where I said they lack specificity?

20 Q. Yes.

21 A. Okay. That is -- I'm not sure. This is a different

22 section, so I'm specifically referring to the

23 content of the decision or the final report here, so

24 I'm not sure how to answer that. That was a

25 different section where the lack of specificity came

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1 in.

2 Q. Okay. We'll move to 152(b)(2) here on Page 11 where

3 Pingora found there appears to be a lack of systemic

4 verification of correction of noncompliance, right?

5 A. Yes.

6 Q. As a practice, would failing to verify the

7 correction of noncompliance be compliant with state

8 complaint system requirements?

9 A. Not as the practice appeared in 2016, it would not

10 be compliant.

11 Q. Okay. And those findings were based on both -- I'm

12 sorry, both on stakeholder feedback and review,

13 right?

14 A. Yes.

15 Q. And part of the stakeholder feedback for that same

16 requirement is that there is no system of graduated

17 sanctions, right?

18 A. That's what the feedback was, yes.

19 Q. Do you recall if during the review that Pingora

20 performed, you found facts that tended to affirm

21 that stakeholder feedback?

22 A. I don't recall any specifics. I can tell you that,

23 you know, based on the comments in the report, the

24 corrective action system was described as needing to

25 improve.

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1 Q. Would it surprise you if there were no system of

2 graduated sanctions published by MDE at the time of

3 this report?

4 A. It would not surprise me in 2016.

5 Q. Now, let's talk about the second part of this

6 report's focus.

7 In the earlier table of contents, the

8 components that were being reviewed were the state

9 complaint -- or, sorry, the dispute resolution

10 system and the monitoring system, right?

11 A. Yes.

12 Q. So we're going to jump right now to the section on

13 monitoring, here on Page 16.

14 Here, starting in the second paragraph,

15 it notes that OSE does not currently utilize dispute

16 resolution data to inform local district monitoring

17 selection. Is that right?

18 A. Yes.

19 Q. And the end of that paragraph, it states that the

20 disconnect of dispute resolution data from the

21 selection rubric for local monitoring may contribute

22 to long-term or systemic noncompliance that remains

23 unaddressed by OSE, right?

24 A. Yes, that's what it says.

25 MR. SICKON: Now, we've been going about

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<p style="text-align: right;">Page 61</p> <p>1 because we have stakeholder meetings across the</p> <p>2 state and gathered a lot of information from a lot</p> <p>3 of different groups, and they had specific questions</p> <p>4 about implementation.</p> <p>5 They were -- it is my belief that they</p> <p>6 had commissioned the report knowing that there would</p> <p>7 be improvements that need to be made, and they set</p> <p>8 out on the path immediately of making improvements.</p> <p>9 Q. Okay. And in our previous discussion, we talked a</p> <p>10 lot about other work that you did for MDE as well.</p> <p>11 You had mentioned that there was an ongoing</p> <p>12 relationship from 2016 or 2017 to present. Is that</p> <p>13 right?</p> <p>14 A. No, I believe I said 2017, '18 to present.</p> <p>15 Q. Well, I'm assuming that we would include this 2016</p> <p>16 report, but then after this 2016 report, it picked</p> <p>17 up again in 2017? Is that what you're saying?</p> <p>18 A. At the point of the 2016 report, I did not know it</p> <p>19 would be an ongoing relationship.</p> <p>20 Q. So that picked up the year after.</p> <p>21 A. It was I think through the process of MDE developing</p> <p>22 a plan to be able to implement some of these that it</p> <p>23 became an ongoing relationship.</p> <p>24 Q. Okay. And so you mentioned them getting to work</p> <p>25 right away, but then you came on through Pingora to</p>	<p style="text-align: right;">Page 63</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And the first is authority, right?</p> <p>3 A. Yes.</p> <p>4 Q. All right. Well, let's go there.</p> <p>5 Here on Slide 8, this recounts that</p> <p>6 language from the 2013 OSEP document that it</p> <p>7 believes the state complaint process is fully</p> <p>8 supported by IDEA, right?</p> <p>9 A. Yes.</p> <p>10 Q. And that it's necessary for the proper</p> <p>11 implementation of the Act and these regulations,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. That's the same language that was quoted in the 2016</p> <p>15 report, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Now, we've talked about several different</p> <p>18 OSEP documents since we started, so let's talk a</p> <p>19 little bit about OSEP's authority in this area.</p> <p>20 We talked about where OSEP is located as</p> <p>21 an office in the Department of Education, right?</p> <p>22 A. Yes.</p> <p>23 Q. And would you say that OSEP is the office within</p> <p>24 USDOE that has the most special education expertise?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 62</p> <p>1 advise them with carrying out some of these</p> <p>2 recommendations later in 2017 or thereabouts. Is</p> <p>3 that what you're saying?</p> <p>4 A. Yes, in addition to other activities. I mean it</p> <p>5 wasn't just the report. It was systems improvement</p> <p>6 in general.</p> <p>7 Q. Okay. I'd like to talk about a training that you</p> <p>8 provided to MDE in March of 2020.</p> <p>9 MR. SICKON: I've pulled up what we're</p> <p>10 going to mark as Exhibit 101.</p> <p>11 (DEPOSITION EXHIBIT 101 MARKED</p> <p>12 FOR IDENTIFICATION at 11:33 a.m.)</p> <p>13 BY MR. SICKON:</p> <p>14 Q. This is a training on state complaint investigation</p> <p>15 that you provided to MDE in March of 2020, right?</p> <p>16 A. Yes.</p> <p>17 Q. Now, it's kind of an awkward format, so I want to</p> <p>18 try and make sure that you can see as much of this</p> <p>19 as possible.</p> <p>20 Does that work?</p> <p>21 A. I think so.</p> <p>22 Q. All right. Here on Slide 6 -- and I'm just going to</p> <p>23 refer to the slide numbers for ease.</p> <p>24 Slide 6 outlines some important context</p> <p>25 for the system of state complaints, right?</p>	<p style="text-align: right;">Page 64</p> <p>1 Q. Which office is that?</p> <p>2 A. I would say the overall office of OSERS in which</p> <p>3 OSEP sits.</p> <p>4 Q. But OSEP administers IDEA at a federal level, right?</p> <p>5 A. I'm not sure that I would agree with the word</p> <p>6 "administers."</p> <p>7 Q. It accepts SEA applications for Part B funds?</p> <p>8 A. Yes.</p> <p>9 Q. And it makes state determinations about each SEA's</p> <p>10 compliance with Part B and Part C, right?</p> <p>11 A. Yes.</p> <p>12 Q. Is there any part of it administering IDEA that I'm</p> <p>13 missing here?</p> <p>14 A. Well, one of their primary functions is to issue</p> <p>15 guidance, and that is in special education as well.</p> <p>16 Sometimes that guidance is jointly issued with</p> <p>17 OSERS. Other times it is issued, like in this case,</p> <p>18 just through OSEP, but the -- the guidance all comes</p> <p>19 with a bit of a disclaimer that says that it does</p> <p>20 not carry the effect or force of law. And the</p> <p>21 majority, I mean they issue guidance regularly.</p> <p>22 Q. Okay. Going back to your report here, Exhibit 100,</p> <p>23 Page 5, you note after quoting an OSEP DMS report,</p> <p>24 that OSEP has the ultimate authority as a condition</p> <p>25 of funding to supervise MDE's state complaint</p>

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<p>1 accomplish that.</p> <p>2 Q. Okay. And the mentoring one, too, also stands out</p> <p>3 to me as one that might be somewhat feasible, but it</p> <p>4 seems like an extension of the independent expert</p> <p>5 training in 3, like an ongoing relationship with</p> <p>6 someone that's an expert. Is that fair?</p> <p>7 A. Yes, and I have only ever seen districts go to that</p> <p>8 level when they have a district that, not so much</p> <p>9 unwilling, but for whatever reason, they have been</p> <p>10 unable to remedy a situation.</p> <p>11 And we're not talking about they could</p> <p>12 have improved faster or that they could have done a</p> <p>13 better job of improving; that they are unable to</p> <p>14 remedy it.</p> <p>15 Q. Okay. And, yeah, withholding funds, I know that is</p> <p>16 the absolute -- I mean it feels like what people</p> <p>17 commonly call something like the nuclear option;</p> <p>18 like it is just not typically ever done, right?</p> <p>19 A. It's not typically ever done.</p> <p>20 Q. Yeah. Now, providing service directly, it sounds</p> <p>21 like this would be in line with something that</p> <p>22 you're saying; unable, more than unwilling is the</p> <p>23 more common scenario. Is that right?</p> <p>24 A. Yes. So by way of example, I do a lot of work with</p> <p>25 the Bureau of Indian Education. There's a small</p>	<p>1 (Recess taken at 12:26 p.m.)</p> <p>2 (Back on the record at 12:30 p.m.)</p> <p>3 MR. SICKON: And that is going to be it</p> <p>4 for this December 2020 training. We're going to</p> <p>5 move now to the Pingora report issued in February of</p> <p>6 2021. We're going to mark this as Exhibit 82.</p> <p>7 (DEPOSITION EXHIBIT 82 MARKED</p> <p>8 FOR IDENTIFICATION at 12:31 p.m.)</p> <p>9 BY MR. SICKON:</p> <p>10 Q. Now, Ms. Knudtson, in the March 2020 training,</p> <p>11 Pingora had explicitly checked in with some OSE</p> <p>12 employees about its challenges since 2016, right?</p> <p>13 A. Yes.</p> <p>14 Q. But Pingora didn't formally revisit the February</p> <p>15 2016 report until it issued this follow-up in 2021,</p> <p>16 right?</p> <p>17 A. The process commenced before that, but the report</p> <p>18 was ultimately issued in February.</p> <p>19 Q. So let's take a look at that report. We'll go to</p> <p>20 Page 3.</p> <p>21 Here it states that MDE OSE commissioned</p> <p>22 this review in order to evaluate changes since the</p> <p>23 2016 review, assess current system effectiveness,</p> <p>24 and receive recommendations to facilitate ongoing</p> <p>25 improvement, right?</p>
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<p>1 school at the bottom of the Grand Canyon in my</p> <p>2 state, and that school is accessible by helicopter,</p> <p>3 by foot, which takes about eight hours, or by</p> <p>4 donkey, which is no one's preferred mode of</p> <p>5 transportation. That is true for staff that have to</p> <p>6 work down in the canyon as well, and they struggle</p> <p>7 with being able to have credentialed providers to</p> <p>8 provide services at that school. There are times</p> <p>9 when they're unable to provide, and the SEA steps in</p> <p>10 to detail federal employees down there.</p> <p>11 Q. That's Havasupai, right?</p> <p>12 A. Yes.</p> <p>13 Q. I've heard Havasupai Lake is beautiful, and I don't</p> <p>14 know if you've ever been. I'd imagine you have if</p> <p>15 you've worked with them.</p> <p>16 A. I have. It's absolutely beautiful.</p> <p>17 Q. But I understand, the remoteness of that location is</p> <p>18 unique, and the same with the Virgin Islands</p> <p>19 situation. That sounds like a very unique and</p> <p>20 difficult situation as well.</p> <p>21 MR. SICKON: Okay. I'm going to check</p> <p>22 back in. I said I would. It's been about a half</p> <p>23 hour. We can keep going if people are interested,</p> <p>24 or if we want to take a break for lunch, I'm happy</p> <p>25 to do that too.</p>	<p>1 A. Yes.</p> <p>2 Q. And regarding those recommendations to facilitate</p> <p>3 ongoing improvement, down at the end of this page,</p> <p>4 in the last paragraph here, it says that those</p> <p>5 recommendations were grounded in requirements and a</p> <p>6 convergence of data, right?</p> <p>7 A. Yes.</p> <p>8 Q. And the next sentence goes on to say that more</p> <p>9 weight was given to those areas where multiple</p> <p>10 sources of information converged to affirm a</p> <p>11 strength of the system or area of general</p> <p>12 supervision needing improvement, right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, we're going to skip to Page 18. This</p> <p>15 starts a section that is a comparison between the</p> <p>16 2016 summary and the 2020 review. Is that fair?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. We're going to jump to Page 22, within that</p> <p>19 section comparing the two.</p> <p>20 Now, this starts a comparison subsection</p> <p>21 about the 2016's -- 2016 reports recommendation</p> <p>22 Number 3, right?</p> <p>23 A. Yes.</p> <p>24 Q. And this is the recommendation then, 2016. I</p> <p>25 believe it was Subparagraph (1)(b) talked about</p>

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<p style="text-align: right;">Page 97</p> <p>1 developing a system of targeted program or district</p> <p>2 monitoring in the event of systemic noncompliance,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. And that there was another recommendation that was</p> <p>6 Paragraph 3 that said MDE should use monitoring to</p> <p>7 follow long-term corrective action to ensure</p> <p>8 appropriate future provision of services for all</p> <p>9 children with disabilities, right?</p> <p>10 A. Yes, from the 2016 report.</p> <p>11 Q. Yeah. After kind of recapping that 2016 report's</p> <p>12 recommendations, the next comparison section is 2020</p> <p>13 progress review of implementing that recommendation,</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. There's documents and then a snapshot, right?</p> <p>17 A. Yes.</p> <p>18 Q. After those sections, there's a section on themes</p> <p>19 from 2020 stakeholder input, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And in that last bullet on Page 23, the</p> <p>22 second to the last sentence starts: Many</p> <p>23 stakeholders felt like the development of dispute</p> <p>24 resolution corrective action was disconnected from</p> <p>25 other monitoring activities, including graduated</p>	<p style="text-align: right;">Page 99</p> <p>1 dispute resolution reporting with monitoring</p> <p>2 activities?</p> <p>3 A. That's what the stakeholders were acknowledging and</p> <p>4 reporting. And it starts off: However, it was</p> <p>5 noticeable to the field. That would be the field of</p> <p>6 stakeholders.</p> <p>7 But, yes, to the extent that these are</p> <p>8 stakeholder concerns that are being reported up to</p> <p>9 this -- the part that you've read so far, yes,</p> <p>10 that's accurate.</p> <p>11 Q. Okay. And that through this stakeholder feedback,</p> <p>12 that it was noticeable that regions with ongoing</p> <p>13 noncompliance experienced especially weak corrective</p> <p>14 action development and verification of</p> <p>15 noncompliance. Is that fair?</p> <p>16 A. No. When you say especially weak, I'm not sure what</p> <p>17 that means. It's not in this sentence.</p> <p>18 Q. In the sentence that starts, additionally...</p> <p>19 A. Yes.</p> <p>20 Q. That corrective action development and verification</p> <p>21 of noncompliance was identified as a weakness.</p> <p>22 A. Yes, but it was not identified as especially weak,</p> <p>23 as you said.</p> <p>24 Q. But it is just especially prevalent in regions with</p> <p>25 ongoing noncompliance. Is that fair?</p>
<p style="text-align: right;">Page 98</p> <p>1 sanctions for similar noncompliance, right?</p> <p>2 A. Yes.</p> <p>3 Q. And graduated sanctions, that's kind of like where</p> <p>4 we left off when we were talking about the December</p> <p>5 2020 training, right --</p> <p>6 A. Yes.</p> <p>7 Q. -- with the four different categories?</p> <p>8 Now, going back to the summary here on</p> <p>9 Page 24 of this comparison between 2016 report's</p> <p>10 Recommendation 3, this states that stakeholders</p> <p>11 acknowledged efforts made by MDE OSE to align the</p> <p>12 general supervision system across the departments</p> <p>13 within MDE OSE. However, it was noticeable to the</p> <p>14 field that dispute resolution reporting, i.e.</p> <p>15 general findings of noncompliance, disaggregation of</p> <p>16 findings by region, and the connection to other</p> <p>17 monitoring activities still didn't exist.</p> <p>18 Additionally, corrective action development and</p> <p>19 verification of noncompliance was identified as a</p> <p>20 weakness, especially in regions with ongoing</p> <p>21 noncompliance.</p> <p>22 Did I read that right?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. So fair to say that even though MDE made some</p> <p>25 progress, it still had not effectively connected</p>	<p style="text-align: right;">Page 100</p> <p>1 A. In the stakeholders' eyes, yes.</p> <p>2 Q. Okay. And we're going to talk a little bit more</p> <p>3 about the stakeholder feedback, and we're going to</p> <p>4 go to Page 27, where we will leave the comparison</p> <p>5 section. And this is the summary of stakeholder</p> <p>6 comments, right?</p> <p>7 A. Yes.</p> <p>8 Q. It's on Page 27, where it says that -- this is a</p> <p>9 report from a survey that was sent to public school</p> <p>10 employees, ISD staff, advocates, parents, and</p> <p>11 attorneys, right?</p> <p>12 A. Yes.</p> <p>13 Q. We're going to take a look at a couple of different</p> <p>14 findings from that survey, and we're going to start</p> <p>15 on Page 29 with the topic area that is the special</p> <p>16 education state complaint system.</p> <p>17 Here on Page 29, there are seven</p> <p>18 different survey results, right?</p> <p>19 A. Yes.</p> <p>20 Q. Each of these survey results provides a percentage</p> <p>21 of survey respondents that agreed or strongly agreed</p> <p>22 with a certain idea, right?</p> <p>23 A. Yes.</p> <p>24 Q. So the higher the percentage, the higher that -- or</p> <p>25 the more survey respondents that agreed with this</p>



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1 particular idea, right?

2 A. At an agree or strongly agree level.

3 Q. Yes, at agree or strongly agree.

4 Okay. And here, the lowest survey result

5 is one that shows that 32.35 percent of the

6 respondents agreed or strongly agreed that special

7 education decisions included meaningful corrective

8 action to address violations, right?

9 A. Yes.

10 Q. Okay.

11 A. At the agree or strongly agree level.

12 Q. Yes.

13 A. I don't think we can infer any more than that on

14 this.

15 Q. And going back up to the start of the summary of

16 comments on Page 27, the only question in the

17 section concerning system changes since 2016 asked

18 whether the survey respondents would -- and I assume

19 that there was a spectrum; strongly disagree,

20 disagree, neutral, agree, strongly agree. Was that

21 the kind of like spread of options available to

22 survey respondents?

23 A. It was a Likert scale, yes.

24 Q. Okay. And so the question that they were provided

25 was whether MDE OSE has worked to improve the

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1 special education dispute resolution system over the

2 last five years, right?

3 A. Yes.

4 Q. Okay. And in response to that question, there was

5 49.28 percent of respondents agreed or strongly

6 agreed, right?

7 A. Yes.

8 Q. The next section was special education dispute

9 resolution system, right?

10 A. Yes.

11 Q. And in this area, the survey had just two questions,

12 right?

13 A. Yes.

14 Q. Okay. The lowest result here was that 65.22 percent

15 of respondents agreed or strongly agreed that

16 information on the special education dispute

17 resolution system is widely available, right?

18 A. Yes.

19 Q. The next section after the state complaint system we

20 talked about a little bit is the special education

21 mediation system. In this survey, there were three

22 questions, right?

23 A. Yes.

24 Q. And here the lowest result was 55.07 percent of

25 survey respondents agreed or strongly agreed that

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1 special education mediation is likely to help

2 resolve disagreements between schools and parents,

3 right?

4 A. Yes.

5 Q. The last topic area that the survey addressed was

6 special education due process hearing system, right?

7 A. Yes.

8 Q. And in this area of the survey, there were five

9 questions, right?

10 A. Yes.

11 Q. In these survey results, the lowest response was a

12 32.35 percent of survey respondents agreed or

13 strongly agreed that special education due process

14 decisions helped me understand special education

15 requirements, right?

16 A. Yes.

17 Q. Okay. And between all of those topic areas, I've

18 kind of highlighted the number of questions and the

19 lowest response rate for that group, right?

20 A. Yes.

21 Q. So fair to say based on the data here, the survey

22 respondents have the lowest confidence in state

23 complaint decisions, including meaningful corrective

24 action to address violations, and in due process

25 decisions helping respondents to understand special

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1 education requirements.

2 A. That's what the survey said.

3 Q. We're going to go just to the next page where we see

4 that there's a section that starts: The

5 opportunities for continued improvement.

6 Before we go on, was there any other kind

7 of additional information outside of the surveys

8 that you received about the response to the state

9 complaint system and decisions, including meaningful

10 corrective action to address violations? Anything

11 that you recall?

12 A. We, again, convened stakeholder groups across the

13 states, and so we had a lot of verbal information

14 that was provided to us.

15 Q. Okay. And I know in the introduction, it mentioned

16 that the recommendations provided were based on

17 requirements and a convergence of data, right?

18 A. Yes.

19 Q. So the survey and then all of the other kind of

20 stakeholder input that you talked about goes into

21 these recommendations, right?

22 A. As well as a review of data, uh-huh.

23 Q. Yes. So let's talk about these recommendations.

24 The recommendations, it states here, are

25 separated into three overarching areas, right;

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1 communication, training resources, and the last one,  
2 law policy and procedure, right?  
3 A. Yes.  
4 Q. Now, there's -- before the recommendations, there's  
5 an introduction to an idea of tiered implementation.  
6 Is that fair?  
7 A. Yes.  
8 Q. Could you describe this tiered system of  
9 implementation to me?  
10 A. As the document states, Tier 1 would be resources  
11 dedicated to universal needs or universally  
12 applicable needs. It's usually lower intensity and  
13 lower in frequency and of limited duration. Focuses  
14 on areas of broad interest and could be cooperative  
15 effort across different domains.  
16 Tier 2 would be targeted needs around a  
17 topic or an issue that may be produced and delivered  
18 to broad audiences through electronic networks or  
19 group events. It could be opportunities to  
20 establish like professional networking networks  
21 among those with similar problems, and include, but  
22 not limited to, webinars, conferences,  
23 teleconferences, videoconferences, and communities  
24 of practice.  
25 And then 3 is targeted and specialized

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1 for intensive needs. That would be more along the  
2 lines of on-site face-to-face kinds of activities,  
3 extensive follow-up through meetings, through  
4 auditing, through multiple ways of addressing  
5 specific needs, and these Tier 3 kinds of  
6 implementation activities tend to be more intensive  
7 and over the longer term.  
8 Q. Okay. And just so I'm clear, this tiered  
9 implementation was meant to apply to the  
10 recommendations that you were about to make to MDE,  
11 right?  
12 A. Yes, that's --  
13 Q. Sorry, go ahead.  
14 A. Yes, that's fair.  
15 Q. Okay. And so in this way, is it meant to give MDE  
16 food for thought in how they ought to implement the  
17 recommendations, like in terms of how they see the  
18 concerns that you're showing them and how they ought  
19 to respond in relation to the recommendations? I  
20 just want to make sure I understand how the  
21 framework applies.  
22 A. Right. So the tiered approach was a recommendation  
23 or a suggestion that they consider when they're --  
24 because every SEA across the country, including MDE,  
25 provides professional development activities around

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1 the state. They foster and support communities of  
2 practice for more discipline-specific -- you know,  
3 depending on one's profession or discipline, more  
4 discipline-specific activities, and they have this  
5 ongoing and continuous system to investigate  
6 complaints, to monitor on a cycle.  
7 And so in addition to those activities,  
8 we looked at the possibility of considering a tiered  
9 implementation. Not every district needs or  
10 requires the same level of assistance with  
11 implementation, and it was a way to look at areas of  
12 need without expending the same level of resource or  
13 commitment with each and every district. It's also  
14 a way of recognizing the districts that are  
15 performing well.  
16 Q. Okay, all right. So I think I'm starting to get it  
17 now.  
18 So the tiered implementation is also the  
19 way that MDE could approach any need for  
20 intervention or corrective action or anything with  
21 districts that were out of compliance. Is that  
22 fair?  
23 A. It's not just intervention or corrective action.  
24 It's how to understand the requirements of IDEA and  
25 the federal regulations and state laws and rules,

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1 how to implement the requirements.  
2 Q. And so it says here right before the introduction of  
3 Tier 1, Tier 2, Tier 3: The more significant or  
4 intense the needs, the greater the frequency of  
5 contact, the longer duration, the higher the  
6 intensity of the support, right?  
7 A. Yes.  
8 Q. Now, when we're talking about implementing the  
9 requirements, how do the needs fit in and whose  
10 needs are those?  
11 A. So the entities responsible for implementation would  
12 include school districts, public agencies, ISDs,  
13 PSAs, and the more intensive the needs, the more  
14 intensive the service. I mean that's --  
15 Q. The more intense -- go ahead.  
16 A. Yeah, that's the model here is that lower-level  
17 needs, you have this good quality professional  
18 development system set up across the state, and then  
19 as the needs go up -- and they could be needs that  
20 might be garnered through public agency request for  
21 assistance in a particular area, it could be as a  
22 result of a self-assessment that's conducted, a data  
23 review, any number of things, including state  
24 complaints, due process hearings, things like that.  
25 So as the needs go up, then it would -- so would the



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<p>1 intensity of the support that's offered, and -- but</p> <p>2 it's not tied solely to noncompliance. It's tied to</p> <p>3 needs.</p> <p>4 Q. Right, I hear you now. I think that, you know, like</p> <p>5 it feels like a spectrum. Like if they're just</p> <p>6 asking for guidance on -- I don't know, it could be</p> <p>7 a particular mode of instruction that they think is</p> <p>8 appropriate for a student, you know, that may not</p> <p>9 necessarily implicate any kind of violation or</p> <p>10 noncompliance, but they're just trying to make sure</p> <p>11 that they're doing what's right for the student,</p> <p>12 that could be a low-level need, MDE could assist in</p> <p>13 a way that gives their position on a particular</p> <p>14 methodology and whether it's appropriate, something</p> <p>15 like that, right?</p> <p>16 A. Yes. I mean I see -- again, at that lower level, I</p> <p>17 see it being more universal. So it's not in</p> <p>18 relation necessarily to a particular student. It's</p> <p>19 like what are effective practices for teaching</p> <p>20 students with autism, what are best practices for</p> <p>21 writing measurable goals. We would want every</p> <p>22 public agency to have that information.</p> <p>23 Q. Right. So that would be your Tier 1, okay.</p> <p>24 A. Yes.</p> <p>25 Q. All right. Good, thank you. Now we're going to</p>	<p>1 talks about ongoing repeated noncompliance, and the</p> <p>2 third one discusses continued and systemic</p> <p>3 noncompliance, right?</p> <p>4 A. Yes. And the first one says track issues of</p> <p>5 noncompliance, so that bullet is related to</p> <p>6 noncompliance.</p> <p>7 Q. Yes. But in the second -- or in the second and</p> <p>8 third sentence, I'm just thinking that those might</p> <p>9 be specifically areas like in that Tier 3 that are</p> <p>10 in -- require intensive support. Would you agree?</p> <p>11 A. I see them as separate purposes, separate</p> <p>12 activities, so I'm not tracking that. This is about</p> <p>13 what the SEA is going to do to be able to, you know,</p> <p>14 collect data and develop workflow, not necessarily</p> <p>15 to train public agencies.</p> <p>16 Q. Okay. All right, fair enough. I'd like to move to</p> <p>17 another training that was provided in March of 2023,</p> <p>18 and March is up here. But, Ms. Knudtson, would you</p> <p>19 agree that this is another -- do you say TAESE?</p> <p>20 A. TAESE.</p> <p>21 Q. TAESE, a presentation that's more of a national</p> <p>22 presentation?</p> <p>23 A. Yes, that's correct.</p> <p>24 Q. Okay. And because MDE produced it to us, and would</p> <p>25 it be safe to assume that someone at MDE attended</p>
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<p>1 head to Page 34, and we're going to look at one of</p> <p>2 the recommendations under the law, policy, and</p> <p>3 procedure section.</p> <p>4 This last recommendation states that MDE</p> <p>5 OSE ought to design and utilize a corrective action</p> <p>6 rubric to track issues of noncompliance for due</p> <p>7 process hearings and state complaints, right?</p> <p>8 A. Yes.</p> <p>9 Q. And they ought to develop a corrective action</p> <p>10 workflow that assists complaint investigators in</p> <p>11 recognizing ongoing, repeated noncompliance, right?</p> <p>12 A. Yes.</p> <p>13 Q. MDE OSE ought to review and update their incentives</p> <p>14 and sanctions to be used to address continued and</p> <p>15 systemic noncompliance. Is that right?</p> <p>16 A. Yes, and OSE has done all of those things.</p> <p>17 Q. And so these recommendations in this Area 3, this</p> <p>18 last bullet, seem to relate to some of the -- more</p> <p>19 to the noncompliance side of needs that we were</p> <p>20 talking about previously with the framework, right?</p> <p>21 A. No, I don't -- I see these as separate activities.</p> <p>22 Q. Uh-huh, but they all relate to noncompliance.</p> <p>23 A. Yes, in that paragraph, they all relate to</p> <p>24 noncompliance.</p> <p>25 Q. Okay. And in that paragraph, the second sentence</p>	<p>1 this national presentation?</p> <p>2 A. I think that's safe to assume. I don't handle any</p> <p>3 of the registration. TAESE does all of that, and</p> <p>4 there's typically over a hundred people attending</p> <p>5 these trainings, so I don't even get a clear, you</p> <p>6 know, view of people's names.</p> <p>7 Q. Yeah, fair enough. I'm going to still ask you a</p> <p>8 couple questions about it, and we're going to start</p> <p>9 with Page 24, I think it is, Slide -- yeah, we'll</p> <p>10 start with Slide 70 here.</p> <p>11 This is another slide that discuss a</p> <p>12 district's failure to comply, right?</p> <p>13 A. Yes.</p> <p>14 Q. And this is somewhat similar to the presentation in</p> <p>15 December 2020 about failure to cooperate, right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And so this also provides some additional</p> <p>18 advice that without the district's perspective and</p> <p>19 the records maintained by the district, the</p> <p>20 investigator must rely more heavily on information</p> <p>21 provided by the complainant, right?</p> <p>22 A. Yes, that's what it says.</p> <p>23 Q. And is that another like piece of advice that you</p> <p>24 think that's helpful for SEAs to communicate if they</p> <p>25 encounter resistance?</p>

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1 Q. And you provided a considerable amount of informal  
2 advice during consultations to MDE over the years,  
3 right?  
4 A. Yes.  
5 Q. Have you reviewed drafts of documents that become  
6 MDE guidance?  
7 A. Occasionally, historically, but not recently.  
8 Q. Have you ever reviewed documents related to child  
9 find?  
10 A. I don't specifically recall that. I've reviewed it  
11 on the website, but I did not have a hand in  
12 drafting that, at least that I recall.  
13 MR. SICKON: I'm pulling up what I'm  
14 going to mark as Exhibit 116.  
15 (DEPOSITION EXHIBIT 116 MARKED  
16 FOR IDENTIFICATION at 1:57 p.m.)  
17 BY MR. SICKON:  
18 Q. And this is a document that we were provided  
19 concerning child find.  
20 Does this document look familiar,  
21 Ms. Knudtson?  
22 A. It does, now that you bring it up, but I don't think  
23 it's the most current version of their child find  
24 guidance on their website, but that's why I didn't  
25 remember it right away.

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1 Q. But this is a document that you edited along with  
2 Ms. Weaver concerning child find in Michigan, right?  
3 A. I'd have to see the whole document to know if it  
4 pertains specifically to Michigan.  
5 Yes, there we go. Sorry, I truly have no  
6 independent recollection of this. I do a lot of  
7 work in a lot of different states.  
8 Q. I understand. This is an 11-page document, although  
9 I believe there's only text on ten of them. I don't  
10 see a date related to it, but we'll move on.  
11 There's other work that you've done with  
12 MDE in terms of guidance, is what we've talked  
13 about; that occasionally this is something that you  
14 do, help them with guidance, right?  
15 A. Yes.  
16 Q. Okay. Now, do you recall ever assisting Rebecca  
17 McIntyre with a response to a letter from an  
18 attorney representing Kalamazoo Public Schools?  
19 A. I have no independent recollection of that.  
20 Q. Is there any other work that you've done for MDE  
21 that I haven't mentioned?  
22 A. No. I mean as mentioned previously, I have  
23 investigated state complaints, I've provided  
24 consultative guidance, the two reports. And then  
25 more so historically, not so much recently, I have

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1 reviewed some guidance documents. I think the most  
2 recent one I did review was their due process  
3 hearing system documents. So I don't think there's  
4 anything else outside of those broad categories.  
5 Q. Could you provide me a kind of ballpark estimate for  
6 how much MDE has paid you for your consulting work  
7 since 2015?  
8 A. I couldn't, I'm sorry. First of all, I don't keep  
9 the books for my little company; and second of all,  
10 it's been a long time, and it's not like it's, you  
11 know, a weekly payroll that you can calculate right  
12 away.  
13 Q. Yeah. Would you be able to ballpark maybe the  
14 amount of time that you would on average consult  
15 with MDE during any one of the years that you've had  
16 this ongoing relationship?  
17 A. Not in a year aggregate. I mean I -- in most  
18 months, I meet with them every other week for an  
19 hour, sometimes two hours. That's a typical month.  
20 Q. Okay. Would you be able to ballpark the work that  
21 went into the 2016 report in terms of time, how much  
22 time it took?  
23 A. I would say I -- in a very rough sense, I would  
24 ballpark it on hundreds of hours because of the  
25 stakeholder meetings.

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1 Q. Would the same kind of number apply for the 2021  
2 report?  
3 A. Yes.  
4 Q. And the trainings that we went over, you know, many  
5 of them had hundreds of slides. Would those be  
6 all-day trainings?  
7 A. The national trainings are all day or two half days  
8 depending on how they structure it. Most of the  
9 training with MDE, the complaint investigator  
10 training would be scheduled for a full day.  
11 Q. Now, in this case, you're reviewing MDE's state  
12 complaint system and its efforts to correct  
13 noncompliance at Kalamazoo Public Schools, right?  
14 A. Yes.  
15 Q. Just going back real quick to an earlier question,  
16 we found a document that might refresh your  
17 recollection.  
18 MR. SICKON: I'm marking it as  
19 Exhibit 59.  
20 (DEPOSITION EXHIBIT 59 MARKED  
21 FOR IDENTIFICATION at 2:03 p.m.)  
22 BY MR. SICKON:  
23 Q. I had asked earlier about whether you had provided  
24 any assistance to Rebecca McIntyre concerning a  
25 letter for an attorney.

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<p style="text-align: right;">Page 137</p> <p>1 as an expert in this case seem like a conflict of</p> <p>2 interest?</p> <p>3 A. Not at all.</p> <p>4 Q. Why not?</p> <p>5 A. Because I have firsthand knowledge of what MDE has</p> <p>6 done over the years, and I see it as improving their</p> <p>7 practices considerably.</p> <p>8 The, yeah, Disability Rights Michigan, or</p> <p>9 at least the precursor to that, the Michigan PNA,</p> <p>10 also recognized the improvements. So I wouldn't be</p> <p>11 alone in that recognition of improvement, and it</p> <p>12 certainly -- as well as OSEP. You know, the funding</p> <p>13 source that you questioned me on earlier multiple</p> <p>14 times, wouldn't they need to be in compliance with</p> <p>15 OSEP. And when they get their 2020 reports and it's</p> <p>16 all thumbs up, then, yeah, they're complying with</p> <p>17 it.</p> <p>18 So I don't see my work with the</p> <p>19 department as an outlier. I don't see it as my view</p> <p>20 is different than some of the things that I read</p> <p>21 from OSEP or Disability Rights, and I see continuous</p> <p>22 improvement as a process, not an event. And I work</p> <p>23 with multiple states that have improved more slowly</p> <p>24 than Michigan, some that may have improved more</p> <p>25 quickly than Michigan.</p>	<p style="text-align: right;">Page 139</p> <p>1 Q. Have you ever worked with or, as in this case, kind</p> <p>2 of across the table from Mr. Mlawer previously?</p> <p>3 A. Both, with and across the table.</p> <p>4 Q. Okay. How many times did you work with him?</p> <p>5 A. Several, many. He was a court monitor on a Federal</p> <p>6 Court case in California for years and hired me as</p> <p>7 the expert to handle the state complaint portion of</p> <p>8 that monitor work because it was outside of his</p> <p>9 field of expertise.</p> <p>10 Q. And what case was that?</p> <p>11 A. That was -- I'll think of it, I'm sorry.</p> <p>12 Q. We'll come back to it. If it comes to you, just let</p> <p>13 me know.</p> <p>14 A. Okay. I'm sorry, it will come to me.</p> <p>15 Q. Were there any other times that you worked with him?</p> <p>16 A. Yes. We have worked on -- together on Wyoming's</p> <p>17 monitoring system. We have co-presented before at a</p> <p>18 conference. We have worked on I believe it was the</p> <p>19 same Federal Court case in response to their</p> <p>20 monitoring report.</p> <p>21 So in total, it would have been a period</p> <p>22 of years in various capacities that we worked</p> <p>23 together, and then in a similar capacity to this, he</p> <p>24 was the expert in the AB case.</p> <p>25 Q. The other case against MDE.</p>
<p style="text-align: right;">Page 138</p> <p>1 So it's not about my training. It's not</p> <p>2 about -- whatever the outcome of this is, it has no</p> <p>3 impact or bearing on the quality of the work that</p> <p>4 I've done. I don't see it as a conflict.</p> <p>5 Q. And you were hired by MDE to produce an expert</p> <p>6 report in this case, right?</p> <p>7 A. Yes.</p> <p>8 Q. And that expert report was meant to respond to Mark</p> <p>9 Mlawer's report, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you reviewed that report this spring, right?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. We're going to go to that report now.</p> <p>14 MR. SICKON: We're going to mark this as</p> <p>15 Exhibit 106.</p> <p>16 (DEPOSITION EXHIBIT 106 MARKED</p> <p>17 FOR IDENTIFICATION at 2:12 p.m.)</p> <p>18 BY MR. SICKON:</p> <p>19 Q. Now, in your response, your report didn't question</p> <p>20 Mr. Mlawer's training or expertise in general</p> <p>21 supervision and IDEA requirements, right?</p> <p>22 A. My report questioned his understanding of the law.</p> <p>23 Q. Have you ever worked with or, as in this case,</p> <p>24 across the table from Mr. Mlawer previously?</p> <p>25 A. I'm sorry, I missed the first part of what you said.</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Yes.</p> <p>2 Q. That's -- is that the only other time that you've</p> <p>3 kind of worked across the table from him?</p> <p>4 A. I believe so.</p> <p>5 Q. You had mentioned the -- he was the special monitor</p> <p>6 in one case, but that there was another federal case</p> <p>7 too?</p> <p>8 A. I believe it was different aspects of the same case.</p> <p>9 Q. Oh, okay, all right. So it would have been that you</p> <p>10 worked together on one federal case, and then across</p> <p>11 the table on the AB case, and then across the table</p> <p>12 in this case, right?</p> <p>13 A. Yes.</p> <p>14 Q. And is that all of the federal litigation like</p> <p>15 interactions that you can think of?</p> <p>16 A. With Mr. Mlawer.</p> <p>17 Q. Yes, okay. Now, he's also worked and trained</p> <p>18 several state educational agencies, right?</p> <p>19 A. I wouldn't be able to answer that. I know he has</p> <p>20 worked with Wyoming, but I'm not sure how many other</p> <p>21 states with which he's worked.</p> <p>22 MR. SICKON: I'm pulling up Mr. Mlawer's</p> <p>23 CV. This is Exhibit 107.</p> <p>24 (DEPOSITION EXHIBIT 107 MARKED</p> <p>25 FOR IDENTIFICATION at 2:16 p.m.)</p>

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<p style="text-align: right;">Page 141</p> <p>1 BY MR. SICKON:</p> <p>2 Q. Just taking a quick spin here, you can see on Page 1</p> <p>3 he still works with the Wyoming Department of</p> <p>4 Education, right?</p> <p>5 A. It may be entirely possible. I would have no</p> <p>6 firsthand knowledge of that, but I don't doubt it</p> <p>7 either.</p> <p>8 Q. Okay. His CV also includes experience working with</p> <p>9 the North Dakota Department of Public Instruction.</p> <p>10 Is that what the CV says?</p> <p>11 A. It says that back in 2014, yes.</p> <p>12 Q. It says that he's worked with the Louisiana</p> <p>13 Department of Education for several years as an</p> <p>14 evaluator and a technical assistance provider. Is</p> <p>15 that right?</p> <p>16 A. Yes. And I have no firsthand knowledge of that</p> <p>17 work.</p> <p>18 Q. All right. And there are other entries here that</p> <p>19 relate to work with the Florida Department of</p> <p>20 Education. Is that right?</p> <p>21 A. That's what it says in 2006, '03 through '06.</p> <p>22 Q. Other work with the Pennsylvania Department of</p> <p>23 Education. Is that right?</p> <p>24 A. Yes, 1997 through '99.</p> <p>25 Q. And, you know, if any of the court cases here ring a</p>	<p style="text-align: right;">Page 143</p> <p>1 being in response to his. Let's go to your report</p> <p>2 now.</p> <p>3 MR. SICKON: If I haven't already entered</p> <p>4 this, we've marked it as Exhibit 100.</p> <p>5 BY MR. SICKON:</p> <p>6 Q. Here in the introduction, you state that</p> <p>7 Mr. Mlawer's report made several conclusory remarks</p> <p>8 based on his erroneous interpretation of IDEA,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. I think I'm going to -- in response to your</p> <p>12 report, Mr. Mlawer also issued a rebuttal, right?</p> <p>13 A. I have not seen that.</p> <p>14 Q. You haven't seen the rebuttal report?</p> <p>15 A. No.</p> <p>16 Q. Okay. Let me bring that up.</p> <p>17 MR. SICKON: We're going mark this as</p> <p>18 Exhibit 109.</p> <p>19 (DEPOSITION EXHIBIT 109 MARKED</p> <p>20 FOR IDENTIFICATION at 2:20 p.m.)</p> <p>21 A. I would prefer to have an opportunity to read it</p> <p>22 before I'm asked questions about it.</p> <p>23 BY MR. SICKON:</p> <p>24 Q. You go ahead, and let me know when you need me to</p> <p>25 scroll.</p>
<p style="text-align: right;">Page 142</p> <p>1 bell for the one that you worked with him on, feel</p> <p>2 free to stop me.</p> <p>3 There's also work here that he did with</p> <p>4 the California Department of Education, right?</p> <p>5 A. In 1999, yes.</p> <p>6 Q. And so seems like he's worked with several state</p> <p>7 education agencies. Is that fair?</p> <p>8 A. Yes.</p> <p>9 Q. What's your impression of his work history and</p> <p>10 credentials in special education?</p> <p>11 A. I -- I don't really have one. I mean I think Mark</p> <p>12 has a skill set that is primarily about monitoring,</p> <p>13 and I know that in the Emma C case, he hired me to</p> <p>14 handle the complaint investigation aspect of that</p> <p>15 Federal Court monitoring because it was out of his</p> <p>16 skill set.</p> <p>17 Q. You said MSC?</p> <p>18 A. Emma C. It's right on the screen right there.</p> <p>19 Q. Oh, Emma C, okay. So that's the one?</p> <p>20 A. Yes.</p> <p>21 Q. Great, thank you. Do you think that he had the</p> <p>22 credentials to qualify as an expert in SEA general</p> <p>23 supervisor responsibilities?</p> <p>24 A. Yes.</p> <p>25 Q. And we know that we talked about your report as</p>	<p style="text-align: right;">Page 144</p> <p>1 A. How many pages is it?</p> <p>2 Q. Eight.</p> <p>3 A. Go ahead.</p> <p>4 Q. Okay.</p> <p>5 A. Go ahead.</p> <p>6 Go ahead.</p> <p>7 Go ahead.</p> <p>8 (Off the record at 2:23 p.m.)</p> <p>9 (Back on the record at 2:29 p.m.)</p> <p>10 BY MR. SICKON:</p> <p>11 Q. And then back up to Page 1, in the introduction</p> <p>12 here, we see Mr. Mlawer state that his initial</p> <p>13 report explains why MDE's system -- systemic</p> <p>14 corrective actions were ineffective, right?</p> <p>15 A. Yes.</p> <p>16 Q. And to reiterate, there are four subpoints</p> <p>17 underneath that that discuss some of what his first</p> <p>18 report concluded, right?</p> <p>19 A. Yes.</p> <p>20 Q. The first bullet here says that MDE relied on</p> <p>21 similar corrective actions in each of these</p> <p>22 complaints without regard to the repetition of child</p> <p>23 find violations by KPS, violations which clearly</p> <p>24 showed that its prior corrective actions had not</p> <p>25 worked, right?</p>



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<p style="text-align: right;">Page 165</p> <p>1 where it starts in earnest the kind of different 2 focus areas and OSEP analysis. Is that fair? 3 A. Yes. 4 Q. Okay. And so there were I think it was 14 pages 5 that I counted on the three focus areas. I don't 6 know if you were counting, but do you have any 7 reason to disagree that it was 14 pages? 8 A. I don't. 9 Q. Okay. And so after those 14 pages, we get to this 10 concern on Page 19, okay. And so that starts the 11 section state complaint procedures, right? 12 A. Yes. 13 Q. Okay. And this section is -- it's about a page 14 long, is that fair, the state complaint procedures 15 section? 16 A. So it's really difficult for me to watch the 17 scrolling. I have a tendency to get motion sick, so 18 I'm kind of averting my eyes when you're scrolling. 19 I'll have to take your word for it on the page 20 number. 21 Q. Oh, I'm not moving it anymore. The section here on 22 state complaint procedures, it looks like it's about 23 a page. 24 A. Yes. 25 Q. And I apologize. Next time I'll do better to try</p>	<p style="text-align: right;">Page 167</p> <p>1 A. Yes. 2 Q. And later it says OSEP also reviewed MDE's guidance 3 for determining the need and amount for compensatory 4 education, right? 5 A. Yes. 6 Q. In between those, it says that OSEP interviewed MDE 7 complaint management staff about this concern, 8 right? 9 A. Yes. 10 Q. Okay. Do you see any facts here showing that OSEP 11 looked at any other part of MDE's state complaint 12 system other than the process used to determine the 13 type, amount, and frequency of compensatory 14 services? 15 A. Well, in order to get to type, amount, and 16 frequency, you have to review the violation, the 17 nature of it, the substantive nature, whether it was 18 a material violation. So, yes, I would say in order 19 to get to the point of -- and it speaks to a 20 process, not just the type, amount, and frequency of 21 services. It's about the process used. So, yeah, I 22 think it's more than just type, amount, and 23 frequency. It was about the process. 24 Q. Process of determining the need and amount of 25 compensatory education.</p>
<p style="text-align: right;">Page 166</p> <p>1 and skip to numbers instead of making you seasick. 2 It's not my intention, I apologize. 3 A. I can get car sick watching a movie, so... 4 Q. Yeah, no, that can't be fun. I'm going to zoom in 5 now. I don't know if that does the same thing, but 6 I'm -- just so for readability. 7 Okay. Now, Page 19, this starts the 8 section on the issue about how complaint 9 investigators determine appropriate compensatory 10 services, right? 11 A. Yes. 12 Q. Okay. And here OSEP frames the analysis like this: 13 OSEP received a complaint from a constituent 14 alleging that MDE's complaint investigators were 15 ordering too much or too little time for 16 compensatory services. In addition, the Michigan 17 Protection and Advocacy Service submitted a report 18 that corroborated the allegation. 19 Did I read that right? 20 A. Yes. 21 Q. Okay. Now, looking at the following analysis, OSEP 22 reports on Page 19 that it reviewed two kinds of 23 documents. First, it says OSEP reviewed five 24 decisions from MDE ordering compensatory services, 25 right?</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Yes. And the only way you can get there is to have 2 a finding that there has been some denial of FAPE, 3 services were not provided, appropriate services, 4 and then determining the -- possibly the amount of 5 harm or the amount of service owed. There are 6 multiple ways to do that, so it's about the process, 7 and there's no one component of the process that 8 they were looking at. 9 Q. There was no one component of the process they were 10 looking at? 11 A. Yes. So it doesn't say here that they were only 12 looking at whether they -- the agency made the right 13 decision in finding a denial of FAPE. They're not 14 looking at whether -- 15 (Reporter clarification.) 16 A. So they were looking at processes, not just the 17 outcome. 18 Q. Right, but the only process that they were concerned 19 about was determining the need and amount for 20 compensatory education, right? 21 A. Yes. And in order to get there, you have to have in 22 your process a determination of a denial of FAPE, 23 what that is based on, the severity of that denial. 24 There are many factors that go into the process of 25 determining the type, amount, and frequency of</p>

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<p style="text-align: right;">Page 169</p> <p>1 compensatory services.</p> <p>2 Q. And so they might have looked at information related</p> <p>3 to these five complaint files, right?</p> <p>4 A. I'm assuming they did look at information related to</p> <p>5 those files, yes.</p> <p>6 Q. And that in the complaint files, there were</p> <p>7 determinations that there were violations because</p> <p>8 MDE ordered compensatory services, right?</p> <p>9 A. And there's, yeah, some process that they went</p> <p>10 through in order to determine them.</p> <p>11 Q. But that wasn't the subject of the OSEP analysis,</p> <p>12 right?</p> <p>13 A. I would disagree with that. That's exactly part of</p> <p>14 what they looked at, because in order to get to</p> <p>15 compensatory education, you have to have a</p> <p>16 verifiable finding that the student was indeed</p> <p>17 denied FAPE; was it a small denial, was it a large</p> <p>18 denial, was it a material violation? All of those</p> <p>19 factors go into determining comp ed.</p> <p>20 Q. Determining comp ed for the student at issue, that's</p> <p>21 part of 151(b)(1), right?</p> <p>22 A. Yes.</p> <p>23 Q. And in this OSEP report, it doesn't mention any</p> <p>24 facts related to a systemic issue in any of the five</p> <p>25 complaint files that it reviewed. Is that right?</p>	<p style="text-align: right;">Page 171</p> <p>1 Q. All right. Let's go back to the report on Page 5.</p> <p>2 On Page 5, you start the first full</p> <p>3 paragraph here with this sentence: When MDE's</p> <p>4 system of general supervision, including its dispute</p> <p>5 resolution systems, were monitored by OSEP in 2020,</p> <p>6 OSEP found in relevant part, right?</p> <p>7 A. Yes.</p> <p>8 Q. And that leads to the quote, the conclusion of the</p> <p>9 section we were just in at the DMS report, right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Now, when you stated that OSEP monitors MDE's</p> <p>12 system of general supervision, including its dispute</p> <p>13 resolution systems, were you stating that OSEP</p> <p>14 monitored MDE's due process hearing system?</p> <p>15 A. No.</p> <p>16 Q. Were you stating that OSEP monitored MDE's use of</p> <p>17 mediation and dispute resolution?</p> <p>18 A. No.</p> <p>19 Q. Were you stating that OSEP monitors MDE's</p> <p>20 investigation of state complaints?</p> <p>21 A. No. I'm pointing out the relevant part, which is</p> <p>22 that state complaint procedures that adjust a</p> <p>23 district's failure to provide appropriate services.</p> <p>24 That's all -- that's the relevant part I'm</p> <p>25 referencing and focusing in on.</p>
<p style="text-align: right;">Page 170</p> <p>1 A. I don't see mention of a systemic issue, no.</p> <p>2 Q. And there's no mention in OSEP's analysis of how to</p> <p>3 appropriately remedy the appropriate future</p> <p>4 provision of services for all children with</p> <p>5 disabilities, right?</p> <p>6 A. That's true.</p> <p>7 Q. So would it be fair to say that this OSEP analysis</p> <p>8 was all about the student level part of remedies,</p> <p>9 the 151(b)(1) part of remedies?</p> <p>10 A. I don't know how to answer that because they also</p> <p>11 reviewed, for instance, MDE's guidance for</p> <p>12 determining the need and amount of compensatory</p> <p>13 education, and that could have included a review of</p> <p>14 systemic findings of noncompliance as well.</p> <p>15 The fact that they reviewed five</p> <p>16 complaint decisions in particular that were</p> <p>17 singles -- what I'm presuming to be single student</p> <p>18 complaints, doesn't preclude them from looking at</p> <p>19 the guidance for determining compensatory education</p> <p>20 and systemic complaints.</p> <p>21 Q. But there's no, like you had already said, analysis</p> <p>22 of the 151(b)(2) concerns about remedy, so --</p> <p>23 A. That's true, but can I just say that I don't equate</p> <p>24 151(b)(2) only to systemic complaints. So I guess I</p> <p>25 was a little lost in your question about systemic.</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. In the way that this introductory sentence is</p> <p>2 structured, though, you say that two things were</p> <p>3 monitored by OSEP in 2020, right?</p> <p>4 A. No.</p> <p>5 Q. Oh. The word "were" typically means that there was</p> <p>6 a plural subject. Did you mean to say was?</p> <p>7 A. So the use of the word "including" is a defined term</p> <p>8 in IDEA, and it means, you know, other or similar</p> <p>9 like terms. It's not meant to be limiting in any</p> <p>10 way.</p> <p>11 So system of general supervision also</p> <p>12 includes systems of dispute resolution, and within</p> <p>13 that, in relevant part for this discussion's</p> <p>14 purpose, is the state complaint procedure,</p> <p>15 particularly as it pertains to the district's</p> <p>16 failure to adjust appropriate services.</p> <p>17 Q. In using that introductory sentence and the phrase</p> <p>18 "including its dispute resolution systems," were you</p> <p>19 also stating the OSEP monitored MDE's procedures for</p> <p>20 issuing remedies to ensure the appropriate future</p> <p>21 provision of services for all children with</p> <p>22 disabilities?</p> <p>23 A. They could have done that. I don't know whether</p> <p>24 they -- they did not address it in their report, but</p> <p>25 when you look at state complaint procedures, state</p>